

Chairman Tom Davis
Opening Statement
Government Reform Committee Hearing,
“What Price Free Speech?: Whistleblowers and the *Ceballos* Decision”

Good morning, and welcome to today’s hearing on the recent Supreme Court decision in the case of *Garcetti v. Ceballos*.

In one sense, this case is familiar: Mr. Ceballos prepared a memorandum about activities within the Los Angeles Police Department and the District Attorney’s office with which his superiors disagreed, and he subsequently experienced adverse employment actions. But, in this case, rather than bringing his lawsuit under statutory whistleblower protections, Mr. Ceballos claimed that his statements should be constitutionally protected by the First Amendment. The Supreme Court, however, disagreed – but only just. In a 5-4 decision written by Justice Kennedy, the Court concluded that Mr. Ceballos’s statements were not entitled to First Amendment protections because they were made pursuant to his official employment duties.

This decision was met with some fairly extreme headlines. For example:

- A *New York Times* headline read: “Some Whistle-Blowers **Lose** Free Speech Protections”
- The *Washington Post* reported “High Court’s Free-Speech Ruling Favors Government; Public Workers on Duty **Not** Protected”
- And, the *Chicago Tribune* reported “High Court **Curbs** Free-Speech Rights of Public Workers on the Job”

Maybe they have a point, but anytime the papers start announcing wholesale rollbacks of whistleblowers’ protections, I get concerned – and so should each member of this Committee. And, that is why we are here today: to understand what this case decided, the grounds on which it was decided, and what it means for the rights and interests of all whistleblowers – federal and state.

In my two terms as Committee Chairman, we have worked hard to improve whistleblowers’ rights. It hasn’t been an easy process, but I think we have made real progress. For instance, Mr. Platts’s bill, H.R. 1317, which we passed out of this Committee, grants federal whistleblowers an alternative course of action in the federal district courts nationwide if their claims of retaliation are not adjudicated quickly. This is a truly landmark advance for whistleblowers.

This Committee also adopted important new protections for those exposing wrongdoing in classified programs – national security whistleblowers. As part of the bipartisan Executive Branch Reform Act (H.R. 5112), we gave those entrusted with the nation’s secrets meaningful recourse against subtle forms of retaliation practiced in their closed world, like security clearance revocation.

Whistleblowers often play an important role in exposing government misconduct. Protecting honest, hardworking federal employees is important to me, and that's why the headlines I mentioned above were so troubling.

From a practical standpoint, the decision and the reporting that followed the decision may give whistleblowers the impression that they're better off just taking their problems to the press. Some people might be okay with that, but the real goal should be the creation of a workplace environment where employees feel free to discuss waste, fraud, and abuse with employers, and employers feel more comfortable fixing the problem than covering it up. We need better government, not more headlines.

We hope to learn much from today's hearing. For example, why did Mr. Ceballos choose to raise his claim under the First Amendment? As a state employee in California, what other avenues were available, and why were they seemingly less attractive? How common is the workplace situation that Mr. Ceballos faced, and does this arise in other areas of public employment – such as education? And, how similar are these experiences to those of federal employees?

But, more than anything, it's important for whistleblowers to know they are still protected from retaliation when they blow the whistle and bring public attention to waste, fraud, and abuse. It's also important that employers have clear guidelines delineating right and wrong behavior. We will examine whether the *Ceballos* decision accomplished either goal.

In the context of government employees, disagreements about how to do a certain job can have profound public consequences. I am reminded of Benjamin Franklin saying that for the want of a nail a shoe was lost, for the want of a shoe a horse was lost, and for the want of a horse the rider was lost, slain by the enemy. The inability of government workers to express their concerns about the smallest of issues involving their jobs -- the nails -- can lead to the greatest of harms, defeat by an enemy. We need to give appropriate protection to those workers while allowing managers the freedom to manage.

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